

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF MANCHESTER AND MANCHESTER
BOARD OF FIRE COMMISSIONERS

Complainant:

CASE NO. F-0104:3

and

DECISION NO. 780046

MANCHESTER FIREFIGHTER'S ASSOCIATION,
LOCAL 856, IAFF, AFL-CIO et al

Respondent :

APPEARANCES

City of Manchester and Manchester Board of Fire Commissioners:

Ray Raimo, Esquire
Wilbur Jenkins, Personnel Director

Manchester Firefighter's Association, Local 856, IAFF, AFL-CIO:

Vincent Wenners, Esquire, Counsel
Ronald Philibert, President

BACKGROUND

Following a "sick-out" in Manchester which commenced September 2, 1978, and in response to an emergency situation, the Public Employee Labor Relations Board issued decision #780039 under the provisions of RSA 273-A:6 III which found that the Firefighters Association was engaged in an illegal job action in violation of RSA 273-A:13, and which ordered the firefighters to return to work and cease such action. The Board order was the subject of a petition to the Hillsborough County Superior Court by the Board to enforce its order and find that the public safety was threatened, the public interest was violated and the order was in fact enforced by a decree of the Superior Court (Bean, J.) on September 7, 1978.

A full hearing was held before the Public Employee Labor Relations Board on October 24, 1978 to consider the facts of the matter in full and to consider whether to make its temporary order permanent.

At the hearing, the parties stipulated to the fact that the firefighters of Manchester had in fact withheld their services from the City, that the firefighters had refused to return to work following the order of the Board and the order of the Court and that the matter had not been resolved until over a week after the order of the Board.

At the hearing, the Firefighter's Association requested that the preliminary Board order be vacated alleging that there was no finding of public interest needed to make a finding and alleging that the actions of the firefighters were justified since there were no good faith negotiations being carried on by the City, requesting in essence that the actions of the firefighters be balanced against the alleged actions of the City and requesting that the Board not issue a permanent order affirming its temporary order. The City of Manchester requested that the temporary order of the Board be made permanent. Following testimony, the Firefighter's Association requested that no order be issued alleging that there was no evidence of danger to the public, emergency or other sufficient evidence of the effects of the strike to justify a conclusion of illegality.

FINDINGS

This Board is constrained to note the provisions of RSA 273-A:13 in its entirety which reads as follows:

Strikes Prohibited. Strikes and other forms of job actions by public employees are hereby declared to be unlawful. A public employer shall be entitled to petition the Superior Court for a temporary restraining order pending a final order of the Board under RSA 273-A:6 where a strike or other form of job action is in violation of the provisions of this Chapter, and may be awarded costs and reasonable legal fees at the discretion of the court.

In addition, the Board has certain emergency powers under RSA 273-A:6 (III) which reads as follows:

The Board may issue a cease and desist order if it deems one necessary in the public interest pending a hearing.

Immediately upon being informed of the events in Manchester, and as soon as possible after the Labor Day weekend, the chairman of the Public Employee Labor Relations Board met with all parties, reviewed the situation, became familiar with the action of the Hillsborough County Superior Court in granting a temporary injunction to the City of Manchester restraining the job action by the firefighters (see Decision #780039) and, when requested by the City to act upon the matter, met with the Public Employee Labor Relations Board, reported the facts as found, being that an illegal job action had been undertaken, and as had been found by the Superior Court, that this was in violation of RSA 273-A:13.

The Board, through the independent investigation of its chairman, through its knowledge of the Superior Court's decisions, and through its taking of notice as to the effect of the withholding of firefighting services from a city the size of Manchester, found the strike to be of sufficient emergency so that it exercised its discretion and issued a cease and desist order.

The Union seems to allege in its petition that since no disaster occurred and since the City did not present explicit evidence stating the need for and nature of the firefighters services, that no emergency or "public interest" established a need either for the order previously issued or for an order after full hearing.

This Board is constrained to review once again the background which existed prior to the adoption of RSA 273-A. Said statute was a compromise between those seeking to have no public employee organizing and those seeking broader rights than the statute contains. The statute is a compromise entered into knowingly by the parties involved in public employee labor relations in New Hampshire. One of the essential parts of that compromise was the prohibition against strikes by public employees. The statute provides many rights not previously enjoyed and to obtain those labor organizations agreed to abide by the terms of the statute (which they would have to observe in any event) and not strike. It is in the public interest that the statute be made to work and it is against the public interest when a labor organization engages in work stoppages or other forms of strike or job action. It is especially critical when such actions are taken by the providers of essential services, such as policemen or firemen and especially so in the cities of New Hampshire. The Board found a violation of the public interest because of the nature of the action and also believes that any job action, strike or withholding of services violates the public interest. The Board was therefore within its jurisdiction to find a violation and "public interest" when it issued its original, temporary order in this case.

In regard to the argument of the firefighters that their action is somehow justified by alleged wrongful acts by the City of Manchester in negotiations (see Decision of Public Employee Labor Relations Board issued this day #780045), the Board is constrained to state that the statute makes no such distinction. Strikes by public employees are illegal. Unfair labor practices, proved or unproved, cannot be decided by unions and used as the basis for illegal actions by them without hearing by the impartial third party established to determine such matters. Avenues for appeal and decision of such alleged actions exist and remedies are available through RSA 273-A and this Board and any excuse that alleged actions by the employer justify a strike must fail.

This Board takes note of the fact that the Hillsborough County Superior Court has refused to vacate its fines against the union or change its findings in connection with the strike despite arguments before said Court essentially identical to those before the Board. The Manchester Firefighters engaged in an illegal strike against the public interest, refused to return to work when ordered to do so by the Court and this Board, withheld critical services from the citizens of the City of Manchester, all in violation of RSA 273-A and other state law.

ORDER

The Board issues the following order:

1. Decision #780039 is affirmed and made permanent.
2. Manchester Firefighter's Association, Local 856, International Association of Firefighters, AFL-CIO is ordered to cease and desist any action or further action in withholding of services or other similar job action against the City of Manchester, this Board having made a finding of a violation by said union of RSA 273-A; 5 II (e), an unfair labor practice.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 21st day of November, 1978

Board members Moriarty and Cummings also present. All concurred. Board member Allman present for a portion of the hearing, took no part in the consideration of this case. Board member Anderson not present, took no part in the consideration of this case. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.